

ORIGINAL

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

2021 JUL 19 AM 8:32

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DONNETTA TOSTON,
Plaintiff,

§ CA No. **3-21 CV 1654 - M**

v.

**BOTTLING GROUP LLC d/b/a PEPSI
BEVERAGES COMPANY,**
Defendant.

§ JURY DEMANDED

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§
§
§

PLAINTIFF'S ORIGINAL COMPLAINT

1. PRELIMINARY STATEMENT

- 1.1. Plaintiff demands a jury for any and all issues triable to a jury. This action seeks compensatory, liquidated and actual/economic damages; and costs and attorney's fees for the claims suffered by Plaintiff, DONNETTA TOSTON, due to BOTTLING GROUP, LLC d/b/a PEPSI BEVERAGES COMPANY (referred to herein as "Defendant" or "PBC") taking adverse employment action against her ultimately resulting in the wrongful termination of her employment as explained herein.
- 1.2. This action arises under the Title VII of the Civil Rights Act of 1964 (Title VII), as amended.

2. JURISDICTION

- 2.1. Jurisdiction is invoked pursuant to 28 U.S.C. § 1343(a)(4) and 28 U.S.C. § 1331.
- 2.2. Costs and attorney's fees may be awarded pursuant to 42 U.S.C. § 12205 and Rule 54, FRCP.

- 2.3. Compensatory damages may be awarded pursuant to 42 U.S.C. § 1981a(a)(1) and 42 U.S.C. § 1981a(a)(2)(b)(1).
- 2.4. Punitive damages may be awarded pursuant to 42 U.S.C. § 1981a(a)(1) and 42 U.S.C. § 1981a(a)(2)(b)(1).

3. VENUE

- 3.1. Venue of this action is proper in this court, pursuant to 28 U.S.C. § 1331(b), because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district and Plaintiff, at all times while an employee of Defendant, resided in this judicial district.

4. PARTIES

- 4.1. Plaintiff is a former employee of Defendant and resides in Dallas, Denton County, Texas.
- 4.2. Defendant BOTTLING GROUP, LLC d/b/a PEPSI BEVERAGES COMPANY is an employer qualified to do business in Texas and employees more than 50 regular employees. Defendant BOTTLING GROUP, LLC d/b/a PEPSI BEVERAGES COMPANY is a corporation incorporated under the laws of the State of Delaware and may be served via its registered agent, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136, USA.

5. STATEMENT OF FACTS

- 5.1 Plaintiff began her employment with Defendant on February 1, 2015.
- 5.2 Plaintiff worked as an L3 Logistics Account Coordinator in Plano, Texas. She performed well (as evidenced by her 2015 performance review) and intended to continue to work with the company until retirement.
- 5.3 In about December 2015, Plaintiff requested to be considered for a promotion from her L3

or Level 3 position to an L4 or Level 4 position. She was qualified for the position and at the time, was already performing many of the job responsibilities of an “L4” without the title or increase in pay.

- 5.4 Plaintiff submitted her resume for consideration and also informed her manager that she would be creating a PowerPoint presentation as part of her submission for her interview. The Level 4 position was a higher position and would have included an increase in pay if Plaintiff was hired.
- 5.5 In January 2016, Plaintiff was informed that she was disqualified for promotion and another individual outside her protected class based on race was hired instead. This individual had less experience than Plaintiff.
- 5.6 Plaintiff made internal complaints to Defendant’s “Speak Up” line asserting that she was being subjected to racial discrimination in the workplace. Plaintiff also asserted that the failure to promote her/hire her for the L4 position was because of her race (African American) and was discriminatory.
- 5.7 Plaintiff filed an EEOC charge of discrimination asserting race discrimination on October 7, 2016, while she was still employed by Defendant.
- 5.7 On October 12, 2016, Plaintiff informed multiple PBC managers via email that she had filed an EEOC Charge of Discrimination.
- 5.8 After engaging in protected activity, Plaintiff was accused of engaging in non-work related activities during work hours on a day when she actually was not present at work at all.
- 5.9 Less than two weeks after she informed Defendant that she had filed an EEOC Charge of Discrimination, Plaintiff was suspended and then terminated.

6. CONDITIONS PRECEDENT

- 6.1 All conditions precedent to jurisdiction have occurred or been complied with.
- 6.2 Plaintiff timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”).
- 6.3 This lawsuit was filed within ninety (90) days of Plaintiff receiving her Notice of Right to Sue from the EEOC.

7. CAUSES OF ACTION

***Race Discrimination
(Title VII)***

- 7.1 Plaintiff incorporates by reference each of the facts and allegations set forth above as if fully set forth herein.
- 7.2 Plaintiff is a member of a protected class under Title VII based on her race (African American).
- 7.3 Plaintiff suffered adverse employment actions when she was suspended and then terminated.
- 7.4 Plaintiff was replaced by someone outside her protected class and/or was treated less favorably from similarly situated employees outside of her protected class.

***Retaliation
(Title VII)***

- 7.5 Plaintiff incorporates by reference each of the facts and allegations set forth above as if fully set forth herein.
- 7.6 Plaintiff engaged in protected activity when she made internal complaints to Defendant about race discrimination and filed an EEOC Charge of Discrimination asserting race discrimination.

- 7.7 Plaintiff was suspended and then terminated less than two weeks after engaging in protected activity.
- 7.8 Plaintiff suffered adverse actions causally related to her engaging in protected activity when she was suspended and then when her employment was terminated.

***Failure to Promote/Failure to Hire
(Title VII)***

- 7.9 Plaintiff incorporates by reference each of the facts and allegations set forth above as if fully set forth herein.
- 7.10 Plaintiff is a member of a protected class based on race (African American).
- 7.11 Plaintiff applied and was qualified for a position for which Defendant was seeking applicants.
- 7.12 Plaintiff was not selected for the position.
- 7.13 Defendant filled the position with someone outside of Plaintiff's protected class.

8. PRAYER

- 8.1 WHEREFORE, Plaintiff prays the Court order to award such relief including the following:
 - 8.1.1 Award Plaintiff actual damages;
 - 8.1.2 Order Defendant to pay Plaintiff back pay and front pay and benefits;
 - 8.1.3 Award Plaintiff compensatory damages for mental anguish;
 - 8.1.4 Award Plaintiff punitive damages to be determined by the trier of fact;
 - 8.1.5 Grant Plaintiff pre-judgment and post-judgment interest;
 - 8.1.6 Order Defendant to pay Plaintiff's costs and attorney's fees in this action; and,
 - 8.1.7 Order and grant such other relief as is proper and just.

Respectfully Submitted,

/s/ **Donnetta Toston**

Donnetta Toston. Pro Se Plaintiff
2626 John West Road, #2039
Mesquite, Texas 75150
T: 214-258-4090
Toston.netta@gmail.com
Plaintiff Pro Se



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Dallas District Office**

Dallas District Office
San Antonio Field Office
El Paso Area Office

207 S. Houston Street, 3rd Floor
Dallas, TX 75202-4726
Toll Free: (866) 408-8075
Potential Charge Inquiries: (800) 669-4000
TTY (214) 253-2710
FAX (214) 253-2720
Website: www.eeoc.gov

**Donetta Toston
2626 John West Road, #2039
Mesquite, TX 75150**

**RE: EEOC Charge Number 450-2017-00069
Donetta Toston v. Pepsico**

Dear Ms. Toston:

Thank you for the additional information you submitted in response to our preliminary assessment of the evidence and decision to dismiss your charge of employment discrimination. We want to assure you that all the evidence submitted by you and the employer has been considered in our review of your case.

After review of the additional information you provided, it is our assessment that further investigation is unlikely to result in a violation of the statutes we enforce. While we realize that you have firm views that the evidence supports your position you were discriminated against, the final determination must comport with our interpretation of the available evidence and the laws we enforce.

Therefore, please find enclosed the Dismissal and Notice of Rights that represents a final determination by the U.S. Equal Employment Opportunity Commission (EEOC) and describes your right to pursue the matter by filing a lawsuit within ninety (90) days of your receipt of the notice. If you fail to file a lawsuit within the statutory ninety-day period, your right to sue in federal court will expire and cannot be restored by EEOC. Additionally, you may wish to consider consultation with private counsel who specializes in employment law for an assessment of your circumstances and the likelihood of prevailing in any litigation you might initiate.

We hope this information is helpful to you.

Sincerely,

April 19, 2021
DATE

Katherine Gonzalez
Katherine Gonzalez
Investigator
(972) 918-3599

Encl.: Dismissal and Notice of Rights (EEOC Form 161)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Donnetta L. Toston
2626 John West Road
#2039
Mesquite, TX 75150

From: Dallas District Office
207 S. Houston St.
3rd Floor
Dallas, TX 75202



*On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
450-2017-00069	Katherine E. Gonzalez, Investigator	(972) 918-3599

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- The EEOC issues the following determination: The EEOC will not proceed further with its investigation, and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission

April 19, 2021

Enclosures(s)

Belinda F. McCallister,
District Director

(Date Issued)

cc:

PEPSICO
c/o Connor Saez, Esq
Corporate Counsel
7701 Legacy Dr., 31A-120H
Plano, Tx 75024

Endorsement with EEOC
Form 161 (11/2020)

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge within 90 days of the date you receive this Notice. Therefore, you should keep a record of this date. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope or record of receipt, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed within 90 days of the date this Notice was issued to you (as indicated where the Notice is signed) or the date of the postmark or record of receipt, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred more than 2 years (3 years) before you file suit may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 – not 12/1/10 – in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, please make your review request within 6 months of this Notice. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Donnetta L. Toston**
2626 John West Road
#2039
Mesquite, TX 75150

From: **Dallas District Office**
207 S. Houston St.
3rd Floor
Dallas, TX 75202



*On behalf of person(s) aggrieved whose identity is
 CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.

EEOC Representative

Telephone No.

450-2017-00303

Katherine E. Gonzalez,
Investigator

(972) 918-3599

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- The EEOC issues the following determination: The EEOC will not proceed further with its investigation, and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

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On behalf of the Commission



April 19, 2021

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Belinda F. McCallister,
District Director

(Date Issued)

cc:

PEPSICO
 c/o Connor Saez, Esq
 Corporate Counsel
 7701 Legacy Dr., 31A-120H
 Plano, Tx 75024

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ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

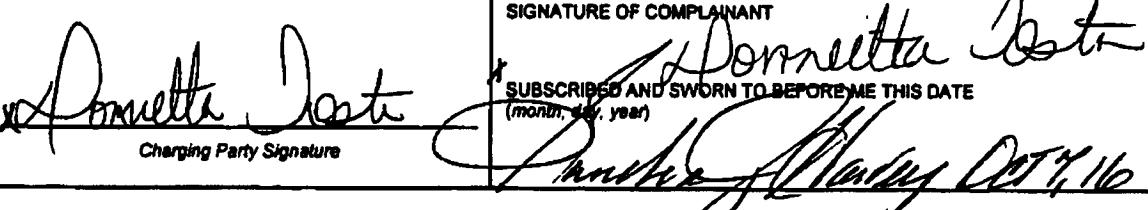
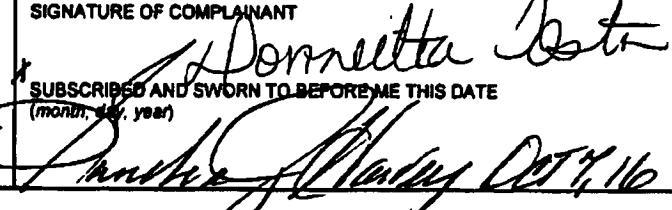
If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

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You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, please make your review request within 6 months of this Notice. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.

EEOC Form 5 (11/08)

CHARGE OF DISCRIMINATION		Charge Presented To: <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC Agency(ies) Charge No(s): 450-2017-00069	
Texas Workforce Commission Civil Rights Division			
and EEOC			
State or local Agency, if any			
Name (Indicate Mr., Ms., Mrs.) Donnetta L. Toston		Home Phone (Incl. Area Code) (313) 799-5230	Date of Birth 04-02-1971
Street Address 3939 Briargrove Lane, Apt 5106, Dallas, TX 75287		City, State and ZIP Code	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name PEPSICO		No. Employees, Members 500 or More	Phone No. (Include Area Code) (972) 963-1074
Street Address 5600 Headquarters Dr, Plano, TX 75024		City, State and ZIP Code	
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).)			
<input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 01-01-2016 01-01-2016	
<input type="checkbox"/> CONTINUING ACTION			
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): PERSONAL HARM:			
In January 2016, I was denied promotion because of my race, Black.			
RESPONDENT'S REASON FOR ADVERSE ACTION:			
In January 2016, Adrienne Merritt, Manager informs me that I was disqualified for the promotion because of the Load Touch Count Report. However, Emily, Last name Unknown, White, was promoted instead of me and had only been with the company four months.			
DISCRIMINATION STATEMENT: I believe that I have been discriminated against because of my race, Black, in violation of Title VII of the Civil Rights Act of 1964, as amended.		NOTARY - When necessary for State and Local Agency Requirements	
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
I declare under penalty of perjury that the above is true and correct.		SIGNATURE OF COMPLAINANT  SUBSCRIBED AND SWEARN TO BEFORE ME THIS DATE (month, day, year)  Oct 07, 2016 Donnetta L. Toston Date Charging Party Signature Diane J. Harvey Oct 7, 16	

CP Enclosure with EEOC Form 5 (11/09)

PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (11/09).
2. **AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.
3. **PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.
4. **ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.
5. **WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

NOTICE OF NON-RETALIATION REQUIREMENTS

Please notify EEOC or the state or local agency where you filed your charge if retaliation is taken against you or others who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an employer to discriminate against present or former employees or job applicants, for an employment agency to discriminate against anyone, or for a union to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION		Charge Presented To: <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC Agency(ies) Charge No(s): 450-2017-00303	
Texas Workforce Commission Civil Rights Division			
State or Local Agency, if any			
Name (Indicate Mr., Ms., Mrs.) Ms. Donnetta L. Toston		Home Phone (Incl. Area Code) (313) 799-5230	Date of Birth 04-02-1971
Street Address 3939 Briargrove Lane, Apt 5106, Dallas, TX 75287		City, State and ZIP Code	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name PEPSICO INC		No. Employees, Members 500 or More	Phone No. (Include Area Code)
Street Address 5600 Headquarters Drive, Plano, TX 75024		City, State and ZIP Code	
Name		No. Employees, Members	Phone No. (Include Area Code)
Street Address		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es))			DATE(S) DISCRIMINATION TOOK PLACE Earliest 10-10-2016 Latest 10-24-2016
<input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)			<input type="checkbox"/> CONTINUING ACTION
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):			
<p>i. Personal Harm: On or about October 7, 2016, I filed a charge of discrimination based on my Race (Black) with the EEOC (charge number 450-2017-00069).</p> <p>A. After returning to work on or about October 10, 2016, I began to face negative terms and conditions of employment. These terms and conditions included but were not limited to a reduced work load and heightened scrutiny by management.</p> <p>B. On or about October 12, 2016, when I informed Adrianne Merritt Almazan, Manager, and Matt Crawford, Manager, that I had filed the above mentioned charge and a police report against Ms. Almazan, I was placed on paid suspension.</p> <p>C. On or about October 24, 2016, I was discharged.</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
<u>Oct 25, 2016</u> <u><i>Donnetta Loston</i></u> Date Charging Party Signature		SIGNATURE OF COMPLAINANT <u><i>Donnetta Loston</i></u> SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year) <u>October 25, 2016</u> <u>W. B. M. M.</u>	

EEOC Form 5 (11/08)

CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To: <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	Agency(ies) Charge No(s): 450-2017-00303
Texas Workforce Commission Civil Rights Division <small>State or local Agency, if any</small>			
II. Respondent's Reasons for Adverse Action: A. I was not given a reason for the changes in my terms and conditions of employment. B. I was told my suspension was the result of the October 12, 2016 conversation with Ms. Almazan and Mr. Crawford. C. I was told I was being discharged for violence in the workplace which allegedly occurred during the October 12, 2016 conversation.			
III. Discrimination Statement: I believe I was discriminated against on the basis of my Race (Black) in violation of Title VII of the Civil Rights Act of 1964, as amended, and retaliated against for filing a charge with the EEOC in violation of Section 704(a) of Title VII of the Civil Rights Act of 1964, as amended.			

<p>I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</p> <p>I declare under penalty of perjury that the above is true and correct.</p> <p><u>Oct 25, 2016</u> <u><i>Dorenetta Jost</i></u> <small>Date</small> <small>Charging Party Signature</small></p>		<p>NOTARY - When necessary for State and Local Agency Requirements</p> <p>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.</p> <p>SIGNATURE OF COMPLAINANT <u><i>Dorenetta Jost</i></u> <small>Subscribed and Sworn to before me this date (month, day, year)</small></p> <p><u>October 25, 2016</u> <u><i>WILLIAM J. MURKIN</i></u></p>
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CP Enclosure with EEOC Form 5 (11/09)

PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (11/09).
2. **AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.
3. **PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.
4. **ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.
5. **WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

NOTICE OF NON-RETALIATION REQUIREMENTS

Please notify EEOC or the state or local agency where you filed your charge if retaliation is taken against you or others who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

